

REFERENCE TITLE: tax setoff for debts; verification

State of Arizona
House of Representatives
Forty-seventh Legislature
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HB 2001

Introduced by
Representatives Knaperek: Konopnicki, Lopez L, Murphy, Quelland

AN ACT

AMENDING SECTION 42-1122, ARIZONA REVISED STATUTES; RELATING TO TAX REFUND
SETOFF FOR DEBTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 42-1122, Arizona Revised Statutes, is amended to
3 read:

4 42-1122. Setoff for debts to state agencies and courts:
5 revolving fund; definitions

6 A. The department shall establish a liability setoff program by which
7 refunds under sections 42-1118 and 43-1072 may be used to satisfy debts ~~which~~
8 ~~THAT~~ the taxpayer owes ~~TO~~ this state or a court. The program shall comply
9 with the standards and requirements prescribed by this section.

10 B. If a taxpayer owes an agency or court a debt, the agency or court,
11 by November 1 of each year, may notify the department, furnishing at least
12 the state agency, court or program identifier, the ~~first~~ FULL name, ~~last~~
13 ~~name, middle initial and~~ social security number, ~~ADDRESS AND ANY OTHER~~
14 ~~AVAILABLE IDENTIFICATION~~ of the debtor ~~AS SHOWN ON THE RECORDS OF THE AGENCY~~
15 ~~OR COURT~~, and the amount of the debt.

16 C. The department shall match the information submitted by the agency
17 or court with taxpayers who qualify for refunds under section 42-1118 and:

18 1. Notify the agency or court of a potential match, the taxpayer's
19 home address and any additional taxpayer identification numbers used by the
20 taxpayer. Even if the taxpayer is not entitled to a refund, the department
21 of revenue shall provide to:

22 (a) The court, the clerk of the court and the department of economic
23 security, for child support and spousal maintenance purposes only, the home
24 address of a taxpayer whose debt for overdue support is referred for setoff
25 and any additional taxpayer identification numbers used by the taxpayer.

26 (b) The court, the home address and any additional taxpayer
27 identification numbers used by the taxpayer whose debt for a court obligation
28 is referred for setoff and who is identified by the court as a probationer on
29 absconder status.

30 2. Request final agency or court confirmation within ten days of the
31 match and of the continuation of the debt. ~~THE AGENCY OR COURT MUST VERIFY~~
32 ~~THE CORRECT IDENTIFICATION OF THE TAXPAYER BY MATCHING AT LEAST TWO ITEMS OF~~
33 ~~IDENTIFICATION OF THE TAXPAYER, AND CONFIRM THAT VERIFICATION IN WRITING TO~~
34 ~~THE DEPARTMENT.~~ If the agency or court fails to provide ~~VERIFIED~~
35 confirmation within forty-five days after the request, the department shall
36 release the refund to the taxpayer.

37 D. An agency or court may submit updated information, additions,
38 deletions and other changes on a quarterly or more frequent basis, at the
39 convenience of the agency or court.

40 E. On confirmation pursuant to subsection C, paragraph 2 of this
41 section, the agency shall notify the taxpayer, by mail to the most recent
42 address provided by the taxpayer to the department: ~~;~~ —

43 1. Of the intention to set off the debt against the refund due. ~~and~~

1 2. Of the taxpayer's right to appeal to the appropriate court, or to
2 request a review by the agency pursuant to agency rule, within thirty days of
3 the mailing of the notice.

4 3. THAT IF THE REFUND IS INTERCEPTED IN ERROR, THE TAXPAYER MAY BE
5 ENTITLED TO THE FULL REFUND PLUS INTEREST AND PENALTIES FROM THE AGENCY OR
6 COURT AS PROVIDED BY SUBSECTION M OF THIS SECTION.

7 F. The basis for a request for review AS PROVIDED BY SUBSECTION E OF
8 THIS SECTION shall not include the validity of the claim if its validity has
9 been established at an agency hearing, by judicial review in a court of
10 competent jurisdiction in this or any other state or by final administrative
11 decision and shall state with specificity why the taxpayer claims the
12 obligation does not exist or why the amount of the obligation is
13 incorrect. If the setoff accounts for only a portion of the refund due, the
14 remainder of the refund shall be sent to the taxpayer.

15 ~~F.~~ G. If, within thirty days of the mailing of the notice, the
16 taxpayer requests a review by the agency or provides the agency with proof
17 that an appeal has been taken to the appropriate court, the agency shall
18 immediately notify the department and the setoff procedure shall be stayed
19 pending resolution of the review or appeal.

20 ~~G.~~ H. If the department does not receive notice of a timely appeal,
21 it shall draw and deliver a warrant in the amount of the available refund up
22 to the amount of the debt in favor of the agency and notify the taxpayer of
23 the action by mail.

24 ~~H.~~ I. Subsections E, ~~F and G~~ THROUGH H of this section do not apply
25 to a debt imposed by a court. A court shall not use this section to satisfy
26 a judgment or payment of a fine or civil penalty until the judgment has
27 become final or until the time to appeal the imposition of a fine or civil
28 penalty has expired.

29 ~~I.~~ J. A revolving fund is established to recover and pay the cost of
30 operating the setoff program under this section. The department may
31 prescribe a fee to be collected from each agency or court utilizing the
32 setoff procedure or from the taxpayer, and the amount shall be deposited in
33 the fund. The amount of the fee shall reasonably reflect the actual cost of
34 the service provided. Monies in the revolving fund are subject to
35 legislative appropriation.

36 ~~J.~~ K. If agencies or courts have two or more delinquent accounts for
37 the same taxpayer, the refund may be apportioned among them pursuant to rules
38 prescribed by the department of revenue, except that a setoff to the
39 department of economic security for overdue support has priority over all
40 other setoffs.

41 ~~K.~~ L. If the refund is insufficient to satisfy the entire debt, the
42 remainder of the debt may be collected by the agency or court as provided by
43 law or resubmitted for setoff against subsequent refunds.

44 ~~L.~~ M. In the case of a refund that is intercepted in error under this
45 section, the taxpayer shall be reimbursed by the agency or court with

1 interest pursuant to section 42-1123. IN ADDITION, IF ALL OR PART OF A
2 REFUND IS INTERCEPTED IN ERROR DUE TO AN AGENCY OR COURT INCORRECTLY
3 IDENTIFYING A TAXPAYER AS A DEBTOR, THE AGENCY OR COURT SHALL ALSO PAY THE
4 TAXPAYER A PENALTY AS FOLLOWS:

5 1. IF THE AGENCY OR COURT REIMBURSES THE TAXPAYER WITHIN ONE HUNDRED
6 EIGHTY DAYS AFTER THE REFUND WAS ERRONEOUSLY INTERCEPTED, THE PENALTY IS
7 EQUAL TO TEN PER CENT OF THE AMOUNT OF THE REFUND THAT WAS INTERCEPTED.

8 2. IF THE AGENCY OR COURT REIMBURSES THE TAXPAYER ONE HUNDRED
9 EIGHTY-ONE THROUGH THREE HUNDRED SIXTY-FIVE DAYS AFTER THE REFUND WAS
10 ERRONEOUSLY INTERCEPTED, THE PENALTY IS EQUAL TO FIFTEEN PER CENT OF THE
11 AMOUNT OF THE REFUND THAT WAS INTERCEPTED.

12 3. IF THE AGENCY OR COURT FAILS TO REIMBURSE THE TAXPAYER WITHIN THREE
13 HUNDRED SIXTY-FIVE DAYS AFTER THE REFUND WAS ERRONEOUSLY INTERCEPTED, THE
14 PENALTY IS EQUAL TO TWENTY PER CENT OF THE AMOUNT OF THE REFUND THAT WAS
15 INTERCEPTED.

16 ~~M.~~ N. Except as is reasonably necessary to accomplish the purposes of
17 this section, the department shall not disclose under this section any
18 information in violation of chapter 2, article 1 of this title.

19 ~~N.~~ O. An agency or court shall not enter an agreement with a debtor
20 for:

21 1. The assignment of any prospective refund to the agency or court in
22 satisfaction of the debt.

23 2. Payment of the debt if the debt has been confirmed to the
24 department for setoff under subsection C, paragraph 2 of this section.

25 ~~O.~~ P. If a tax refund is based on a joint income tax return and the
26 department of economic security receives a written claim from the
27 nonobligated spouse within forty-five days after the notice of a setoff for
28 overdue child support, the setoff only applies to that portion of the refund
29 due to the obligor. The nonobligated spouse shall provide to the department
30 of economic security copies of both the obligated and nonobligated spouse's
31 federal W-2 forms and evidence of estimated tax payments supporting the
32 proportionate share of each spouse's payment of tax. The department of
33 economic security shall retain the amount of the set off refund due to the
34 obligated spouse determined by a proration based on the tax payments of each
35 spouse by estimated tax payment or tax withheld from wages.

36 ~~P.~~ Q. For the purposes of this section:

37 1. "Agency" means a department, agency, board, commission or
38 institution of this state. Agency also means a corporation that is under
39 contract with this state and that provides a service that would otherwise be
40 provided by a department, agency, board, commission or institution of this
41 state, if the contract specifically authorizes participation in the liability
42 setoff program and the attorney general's office has reviewed the contract
43 and approves such authorization. The participation in the liability setoff
44 program shall be limited to debt related to the services the corporation
45 provides for or on behalf of this state.

1 2. "Court" means all courts of record, justice courts, municipal
2 courts and police courts.

3 3. "Debt" means an amount over fifty dollars owed to an agency or
4 court by a taxpayer and may include a judgment in favor of this state or a
5 political subdivision of this state, interest, penalties, charges, costs,
6 fees, fines, civil penalties, surcharges, assessments, administrative charges
7 or any other amount. Debt also includes monies owed by a taxpayer for
8 overdue support and referred to the department of economic security for
9 collection.

10 4. "Overdue support" means a delinquency in court ordered payments for
11 spousal maintenance or support of a child or for spousal maintenance to the
12 parent with whom the child is living if child support is also being enforced
13 pursuant to an assignment or application filed under 42 United States Code
14 section 654(6) or other applicable law.